

## Book Reviews

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### Recommended Citation

(1973) "Book Reviews," *Cornell International Law Journal*: Vol. 7: Iss. 1, Article 5.  
Available at: <http://scholarship.law.cornell.edu/cilj/vol7/iss1/5>

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## BOOK REVIEWS

**The Politics of the Ocean.** By Edward Wenk, Jr. Seattle: University of Washington Press, 1972. Pp. xviii, 590.<sup>1</sup>

**Freedom of Scientific Research.** Edited by Warren S. Wooster. New York: Crane, Russak and Co., Inc., 1973. Pp. 255.<sup>2</sup>

Until recently, Socrates' comment that "there is no favorable wind unless the helmsman knows his destination" summed up all too accurately this country's "doldrums" attitude toward the oceans. Civilian sea programs received little attention in Washington. Marine affairs were dealt with on a piecemeal basis. National security and the profit motive were often the only considerations.

It is only in the last two decades—with the appearance of dead seas the size of Lake Erie and the hunting of the blue whale into virtual extinction—that the vast potential and strange fragility of the ocean have been realized. Reading Edward Wenk's book, one conjures up an image of the nation-state as an ogre Rip Van Winkle, slowly awakening to oceanic realities and trying to set priorities and sort out issues pertinent to the development of a sane marine resources policy. Wenk played a major role in the formation of that policy, and his unflagging efforts to improve our stewardship of this "Blue Planet" give *The Politics of the Ocean* its special authenticity.

Wenk traces the political and technological developments which led this country to the conclusion in the 1960's that a systematic, integrated approach to the oceans was a governmental necessity. We get a bird's-eye view of political clash and compromise as policies are announced, priorities set, projects undertaken. The book contains more legislative history than the average reader will appreciate, but even here the writing is lively.

Some of the key events may be briefly mentioned. Sputnik, in 1957, was a prime catalyst, for it was after the creation of the National Aeronautics

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1. Dr. Wenk is Professor of Engineering and Public Affairs at the University of Washington at Seattle. He served as the first science adviser to Congress and in various science advisory posts in the Kennedy, Johnson, and Nixon administrations.

2. Dr. Wooster is Professor of Oceanography at the Scripps Institution of Oceanography at the University of California, La Jolla. Between 1961-63 he served as director of the UNESCO office of oceanography, and as secretary of the Intergovernmental Oceanographic Commission in Paris.

and Space Administration that the idea for a "wet NASA" was first conceived. Increased funding for oceanographic research during the Kennedy administration is duly applauded, but as the author points out, "the single injection of budgetary hormones" was by no means the same as a national commitment to a plan or goal.<sup>3</sup> That deficiency was remedied by Congress with passage of the 1966 Marine Resources and Engineering Development Act. Two years later President Johnson proposed an international Decade of Ocean Exploration. In between those years came the electrifying call by United Nations Ambassador Pardo of Malta for the internationalization of the seabed. In May, 1970, President Nixon issued an updated statement of United States policy. Three months later the United States submitted its Draft Treaty on the International Seabed to the United Nations.<sup>4</sup>

In the light of recent developments (the United States Draft Treaty occupies an important place in ongoing preparations for the Law of the Sea Conference), Wenk's lengthy treatment of the 1966 Act and the International Decade proposal appears somewhat out of proportion. It should be noted, however, that Wenk's resignation from government in early 1970 came *after* Nixon-administration cutbacks in ocean program funding put many of the initiatives from the Johnson-Humphrey years in jeopardy.

A more serious problem is the scant attention Wenk devotes to the 1945 Truman Proclamation, which unilaterally asserted United States jurisdiction over the mineral resources "of the subsoil and the seabed of the continental shelf" within 200 miles of the eastern seaboard.<sup>5</sup> The action was without legal precedent, and subsequent unilateral claims of even more extensive national jurisdiction, especially by Latin American nations, signifies more than "chickens from the Truman Proclamation coming home to roost," as Wenk rather casually puts it.<sup>6</sup> Indeed, fallout from the Truman move may well have undermined the credibility of U.S. leadership in this area, and even knocked the international pilings out from under the concept of the oceans as the "common heritage of mankind."<sup>7</sup>

Some of Wenk's best writing appears in Chapters Four through Seven,

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3. E. WENK, JR., *THE POLITICS OF THE OCEAN* 75 (1972).

4. Draft United Nations Convention on the International Seabed Area, U.N. Doc. A/AC.138/2 in 9 INT'L LEGAL MATERIALS 1046 (1970).

5. Presidential Proclamation 2667, Policy of the United States with Respect to the National Resources of the Subsoil and Sea Bed of the Continental Shelf, 59 Stat. 884 (1945).

6. WENK, *supra* note 3, at 286.

7. G.A. Res. 2749, 25 U.N. GAOR Supp. 28, at 24, U.N. Doc. A/8028 (1971).

where he discusses coastal-zone use and management, marine research and technology, the evolving law of the sea, and marine resource development. As Executive Secretary of the Marine Resources Council, Wenk tried to tie specific ocean programs to broader national goals. It was not always easy.

The Council's pilot project in fish protein concentrate illustrates the difficulties he and the Council faced. The project was designed to help shore up the ailing U.S. fisheries industry, and to help alleviate worldwide protein malnutrition. Starting from scratch, Council initiatives resulted in a protein concentrate ready for test marketing at various locations. At that point, the Food and Drug Administration stepped in and banned the product on the ground that it (the FDA) had to take into account the cultural and esthetic preferences of the American public. Wenk openly hints that the FDA ruling may have been influenced more by pressure from the National Milk Producers Federation than by concern for the "esthetic preferences" of the American consumer. In any event, the FDA concluded that the idea of eating whole fish, even in concentrate form, was just too much for the American public to swallow. (This, despite the fact that whole fish and shellfish—including sardines, clams, and oysters—are eaten all the time, and despite the further fact, pointed out by *Science* magazine at the time, that gelatin made from hooves, as well as sausage made with ears and snouts, are readily available on the United States market.) The final irony is that now a "premium" concentrate is being developed by a group of companies, including Nabisco, for sale to affluent Americans.<sup>8</sup>

The thrust of Wenk's book goes beyond the mere narration of historic marine trailblazing. Much of the text is diagnostic and prescriptive. The book is aimed at the general reader, and its message, in simplest terms, could be captioned: mobilize on behalf of the oceans.

Wenk places special emphasis on certain principles. One of them is the need to manage technology. This means bringing scientific know-how to bear on social problems. It means thinking through more carefully the consequences of ocean policies. For example, was the oil on Santa Barbara's beaches worth it? To Union Oil? To the country? Similarly, shouldn't something be done to prevent absurdities like the incident off the coast of Washington, where a large diesel barge was pumped "full"

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8. FDA standards have been changed since the original 1967 ruling. Nabisco's product will be aimed at those best able to pay, rather than at those most in need.

while the overboard drain was open? The answers to such questions would come more readily, Wenk suggests, through creation of a "technological ombudsman," independent of the President.<sup>9</sup>

Two other principles Wenk regards as essential are freedom of scientific research and freedom of the seas. Yet both these concepts are undergoing tremendous change. Here Wooster's book is a helpful counterpoint to Wenk's analysis.

Although not written for as wide an audience as Wenk's book, Wooster's *Freedom of Oceanic Research* is a timely and valuable addition to the literature. Certainly one could not ask for a better exposition of developing countries' views on the issues of scientific research and freedom of the seas.<sup>10</sup>

Wenk treats the wariness of developing countries toward scientific research rather brusquely:

[O]n the basis of a few unhappy experiences with expeditions, they distrust the innocent uses of data developed for scientific purposes. Laboring under anxieties . . . they see territorial claims as their only protection; with understandable impatience, they discount the future.<sup>11</sup>

But as Wooster's book makes clear, to state that there have been only a "few unhappy experiences" is to miss the point. States that grew up as Banana Republics or as the "chattels" of colonial masters have a built-in resentment toward the patriarchal state for a long time after, whatever the latter's subsequent good intentions. As Nobel poet Pablo Neruda of Chile has written:

When the trumpet sounded . . .  
and Jehovah parceled out the earth  
to Coca-Cola, Inc., Anaconda,  
Ford Motors, and other entities,  
The Fruit Company, Inc.  
reserved for itself the most succulent,  
the central coast of my own land,  
the delicate waist of America.<sup>12</sup>

9. WENK, *supra* note 3, at 382.

10. Of the eight essays in Wooster's book, four deal extensively or *in toto* with the perspective of developing countries on issues under discussion here. As such, the book provides an interesting contrast to Wenk's presentation of the issues. No attempt is made to review the Wooster book in its entirety.

11. WENK, *supra* note 3, at 415.

12. Neruda won the Nobel Prize for Literature in 1971. The quotation here is from the poem "The United Fruit Co.," in NERUDA AND VALLEJO (Robert Bly, ed. 1972). Neruda served in the Chilean Senate in the 1940's. Prior to that he had been Chile's Consul in Spain and in Mexico. He was widely credited with playing a key role in the election of Salvador Allende in 1970, and he served as President Allende's Ambassador to France until illness forced his resignation in November, 1972. Neruda died September 23, 1973.

Furthermore, the doctrine of freedom of the seas was created by the maritime powers, and has been used largely for their convenience and benefit. (It meant, among other things, that fish were common property, free for the taking by whomever might capture them.)<sup>13</sup> Developing countries had no part in the doctrine's formulation—so why should they adhere to it, especially in view of the fact that the United States was the first country to disregard the doctrine?

In this context, the third world's wariness toward scientific research begins to seem less misguided. Since freedom of research rests heavily on freedom of the seas, attacks on one doctrine weaken both. Incidents like the *Pueblo* increase suspicions,<sup>14</sup> and countries develop a permanent fear of being taken. That uneasiness, coupled with a lack of technological expertise and the example set by the United States in 1945, tend to make actions taken by developing countries to protect offshore ocean resources something of a territorial imperative. Wenk's charge that they have "discounted the future" does not answer the question: future for whom? Developing countries insist *that* question can only be answered by each country on its own.

Wenk would argue otherwise. Again and again his book returns to the concept of the oceans as the "common heritage of mankind." He stresses our "fiduciary duty" to preserve this global environment.<sup>15</sup> It is hard to argue with Wenk's analysis. Many commentators, United States Presidents and Vice-Presidents, and the United Nations itself, have come to similar conclusions. Nevertheless, there are difficulties.

First, the concept of the oceans as the common heritage of mankind is not a legal principle. It may be that the law ought to move in this direction, but at the moment the phrase's persuasiveness is of a moral, rather than a legal order.

Second, the concept, as embodied in the United States Draft Treaty, may be hard to sell. In effect, what the United States is asking is that coastal nations give up known offshore assets, (e.g. oil, or fisheries) for an "unspecified share of an uncertain portion of undertermined revenues

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13. Countries now claiming territorial jurisdiction within a 200 mile limit assert an analogous right to capture based upon authority equally self-created.

14. The *Pueblo* was at first portrayed by the Department of Defense as an environmental research ship and not as a United States naval intelligence vessel. See E.D. Brown, *Freedom of Scientific Research and the Legal Regime of Hydrospace*, 1969 INDIAN J. INT'L L. 336. See also WARREN S. WOOSTER, FREEDOM OF OCEANIC RESEARCH 162 (1973).

15. WENK, *supra* note 3, at 435.

from . . . [largely] . . . undiscovered resources."<sup>16</sup> It seems certain that most developing countries will act to protect their interest in known, albeit dwindling resources, rather than agree to serve as custodians of the international community.

Third, for the common heritage concept to be accepted in future international negotiations, support will have to come from the bottom up. For historical reasons, the motives and proposals of the big maritime powers are suspect. Drum beating by this country would only defeat our purpose. However, support for something like the United States Draft Treaty could well develop in land-locked and barely developed countries which presently do not share in the ocean's bounty. An international regime for the oceans would make available to them assets which would otherwise remain beyond their reach.

Finally, the Either/Or approach Wenk takes to the problem is disturbing. On more than one occasion, and especially with reference to the upcoming Law of the Sea Conference, he seems to be saying, *either* we use this opportunity for international cooperation and really make things work, *or* we can pretty much write off the possibility of international cooperation, forever. But is it necessary to view things in such apocalyptic terms? Is it fair, for example, to characterize recent developments as a "greedy rush by individual states to usurp the 'common heritage' under conditions of anarchy," as the *New York Times* has recently done?<sup>17</sup>

If short-term self-interest completely dominates the Conference, then the Either/Or prophets will be proved true, with a vengeance. But the possibility of such a scenario is not its accomplishment. As Wenk and others have noted, it would not behoove the developing countries to push the maritime powers too far. Countermeasures could be quite severe. And voting majorities alone will not secure the developing countries their stated objectives. Thus, compromise is likely. Indeed, it may well be that much of the raucous "position taking" which has marked pre-Conference discussion was in fact designed to test the outer edges of the bargaining spectrum.

People have now learned that the ocean is not a bottomless garbage pit. Nor is it infinitely self-restoring. Ultimately, recognition of the ocean's

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16. Krueger, *An Evaluation of United States Oceans Policy*, 17 MCGILL L. J. 648 (1971). An expanded version of Professor Krueger's article has now been published under the title MARINE RESOURCES POLICY: AN INTERNATIONAL ANALYSIS.

17. N.Y. Times, Aug. 28, 1973, at 32, cols. 3-4.

frailty and its immense potential should lead to an awakening of the kind Wenk calls for, a determination to use the common heritage for the common weal.

Whether we can expect the coming Law of the Sea Conference to implement—or even agree upon—such a “strategy for mankind,”<sup>18</sup> is another question. The issues themselves are complex, and political considerations further complicate the matter. Some countries may be out on a limb, but even there, negotiations and compromise will proceed within limits imposed by intangible factors like “saving face” and prestige. One has to hope that the Conference, in an effort to accommodate everyone, will not neglect the future of the *oceans*. Indeed, if enough facts are brought forward—even the Aswan dam is now known to have seriously affected the ecology of the eastern Mediterranean Sea, if the common threat to the oceans is made sufficiently clear, then the Conference may well serve as the cornerstone of international oceanic cooperation.

Wenk would have it so. But whatever the outcome of the Conference, one can hardly fault Wenk for such a thoroughgoing effort to lay the issues before us. It is unlikely the oceans will find a more articulate spokesman.

*Timothy Baland*

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18. WENK, *supra* note 3, at 437.